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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/028,666      | 12/28/2001  | Emmett M. Flynn      | 9973-17             | 3650             |

1059 7590 07/18/2003

BERESKIN AND PARR  
SCOTIA PLAZA  
40 KING STREET WEST-SUITE 4000 BOX 401  
TORONTO, ON M5H 3Y2  
CANADA

EXAMINER

MADSEN, ROBERT A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 07/18/2003

2

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/028,666

Applicant(s)

FLYNN, EMMETT M.

Examiner

Robert Madsen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5171593) in view of Schecter (US 3079037).
3. Doyle teaches a method of packaging fruits and vegetables by placing fruits or vegetables in a food container, overwrapping the container with a sheet of perforated flexible film, folding the sheet underneath the container so that the edges overlap, and heat sealing the overlapped portions, as recited in claim 3, together during handling and display (Abstract, Figures, Column 2, lines 13-31, Column 3, lines 3-16 and 47-52). However, Doyle is silent in teaching placing and securing a reusable lid for the container underneath the container as recited in claim 1
4. Schecter recognizes the shortcomings of the package of Schecter teaches food packages that are sealed with a flexible sheet, for example, do not offer the capability of re sealing, or reusing, the container after the sheet is unsealed, and one often has to transfer the food products to another container for storage (Column 1, lines 19-36). Schecter solves the problem by packaging food in a storage container, placing the storage container on top of a reusable lid for the

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container, covering/sealing the container with sheet of transparent and flexible material, and securing the lid against the bottom of the container during handling and display. Schecter teaches this method of packaging food products provides a container can be re-used and closed as a storage container after the initial transparent seal is removed (i.e. the flexible sheet) , in addition to the lid being used as a support for the container(Column 1, lines 37-70, Column 2, lines 14-36, Column2, line 69 to Column 3, line 5, Column 4, lines 41-64 ). Schecter further teaches, as recited in claim 4 that the container and lid are made from commercially available reusable plastic (Column 3, line 62 to Column 4, line 40).

5. Therefore, it would have been obvious to modify the method of packaging of Doyle and use a container with a lid secured beneath as recited in claims 1 and 3, that is made of commercially available re-usable plastic as recited in claim 4, since Schecter teaches this offers the advantage of providing a re-usable container subsequent to removing a flexible and transparent seal as well as a support for the container. One would have been substituting one conventional container for another for the same purpose: providing a sealed mercantile food container with a transparent flexible sheet as the seal. It would have been further obvious to select a commercially available plastic.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5171593) in view of Schecter (US 3079037) as applied to claims 1, 3 and 4 above, further of Chum et al. (US 5685128)

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7. Doyle teaches a punctured non-breathable sheet to allow gases to escape from the container. Chum et al. is relied on as evidence of the conventionality of using breathable films for overwrapping fruits and vegetable containers (Abstract, Column 9, lines 40-50). Therefore, it would have been obvious to modify Doyle and include a breathable film since one would have been substituting one film for another for the same purpose: allowing gases in and out of a fruit and vegetable container.

### ***Conclusion***


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee (US 1553827) teaches the concept of packaging a lid beneath a container and covering the container with an flexible sheet wherein the package can be converted from display to storage. Saffron et al. (US 234308 B1) also teaches the concept of packaging a lid under a container for display purposes and overwrapping the lid and container, wherein the container can be re-used and sealed by the lid after removing the overwrap. Brown (US 905145) also teaches the concept of packaging an lid beneath a container and covering the container that is overwrapped wherein the package can be converted from display to storage. Morrison (US 1509524) teaches a fruit container with lid that can also be mounted under the container for support.

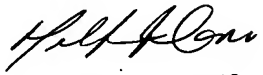
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
July 13, 2003

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700